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Free Stream Media Corp. d/b/a Samba TV

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

FREE STREAM MEDIA CORP.,
d/b/a SAMBA TV,

Plaintiff,

vs.

ALPHONSO INC., ASHISH CHORDIA,
RAGHU KODIGE, and LAMPROS
KALAMPOUKAS,

Defendants.

Case No. 3:17-cv-02107-RS

**PLAINTIFF'S REQUEST FOR JUDICIAL
NOTICE IN SUPPORT OF PLAINTIFF'S
OPPOSITION TO DEFENDANTS'
MOTION TO DISMISS PLAINTIFF'S
FIRST AMENDED COMPLAINT**

Judge: Hon. Richard Seeborg
Dept: Courtroom 3, 17th Floor
Time: 1:30 P.M.
Date: August 31, 2017

REQUEST FOR JUDICIAL NOTICE

Plaintiff Free Stream Media Corporation d/b/a Samba TV (“Samba”) respectfully requests that the Court take judicial notice of the following documents cited in its Opposition to Defendants’ Motion to Dismiss Plaintiff’s First Amended Complaint (ECF No. 166).

MEMORANDUM OF POINTS AND AUTHORITIES

Courts may take judicial notice of facts that are “not subject to reasonable dispute because [they] . . . can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b)(2). “[C]ourts must consider the complaint in its entirety, as well as other sources courts ordinarily examine when ruling on Rule 12(b)(6) motions to dismiss, in particular, documents incorporated into the complaint by reference, and matters of which a court may take judicial notice.” *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 323 (2007); *see also N.M. State Inv. Council v. Ernst & Young LLP*, 641 F.3d 1089, 1094 (9th Cir. 2010); *Outdoor Media Grp., Inc. v. City of Beaumont*, 506 F.3d 895 (9th Cir. 2007).

Plaintiff seeks judicial notice of the following documents, which are judicially noticeable for the reasons set forth below:

1. Attached hereto as **Exhibit 1** is a true and correct copy of U.S. Patent No. 9,386,356, entitled “Targeting With Television Audience Data Across Multiple Screens.” *See* Declaration of William P. Nelson, filed concurrently herewith (“Nelson Decl.”), ¶ 2. Courts “may take judicial notice of court filings and other matters of public record.” *Reyn’s Pizza Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 (9th Cir. 2006). Exhibit 1 is therefore judicially noticeable.

2. Attached hereto as **Exhibit 2** is a true and correct copy of an article entitled “In a multi-screen future, phones don’t control TVs, TVs control phones,” produced at SAM-ALP 1702049 - SAM-ALP 1702050 (available at <http://www.foxnews.com/tech/2014/05/09/in-multi-screen-future-phones-dont-control-tvs-tvs-control-phones.print.html>). *See* Nelson Decl., ¶ 3. Courts may take judicial notice that the public was aware of certain information. *See Heliotrope Gen., Inc. v. Ford Motor Co.*, 189 F.3d 971, 981 n.18 (9th Cir. 1999) (“We take judicial

1 notice that the market was aware of the information contained in news articles submitted by the
2 defendants.”). Exhibit 2 is therefore judicially noticeable.

3 3. Attached hereto as **Exhibit 3** is a true and correct copy of a document entitled
4 “Orville Redenbacher’s Bets on Binge Watchers” produced at SAM-ALP 1702036 - SAM-ALP
5 1702037 (available at [https://samba.tv/app/uploads/2017/06/Case-](https://samba.tv/app/uploads/2017/06/Case-Studies_Conagra_SyncRetarget.pdf)
6 [Studies_Conagra_SyncRetarget.pdf](https://samba.tv/app/uploads/2017/06/Case-Studies_Conagra_SyncRetarget.pdf)). *See* Nelson Decl., ¶ 4. Courts may take judicial notice that
7 the public was aware of certain information. *See Heliotrope*, 189 F.3d at 981 n.18 (“We
8 take judicial notice that the market was aware of the information contained in
9 news articles submitted by the defendants.”). Exhibit 3 is therefore judicially noticeable.

10 4. Attached hereto as **Exhibit 4** is a true and correct copy of an article entitled
11 “Flingo reveals Samba, a first of its kind dual interactive TV and second screen platform,”
12 produced at SAM-ALP 1701965 - SAM-ALP 1701968 (available at
13 [https://pando.com/2013/01/04/flingo-releases-samba-a-first-of-its-kind-dual-interactive-tv-and-](https://pando.com/2013/01/04/flingo-releases-samba-a-first-of-its-kind-dual-interactive-tv-and-second-screen-platform/)
14 [second-screen-platform/](https://pando.com/2013/01/04/flingo-releases-samba-a-first-of-its-kind-dual-interactive-tv-and-second-screen-platform/)). *See* Nelson Decl., ¶ 5. Courts may take judicial notice that the public
15 was aware of certain information. *See Heliotrope*, 189 F.3d at 981 n.18 (“We take judicial
16 notice that the market was aware of the information contained in news articles submitted by the
17 defendants.”). Exhibit 4 is therefore judicially noticeable.

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19 For the foregoing reasons, Plaintiff respectfully requests that the Court grant this Request
20 for Judicial Notice.
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1 Dated: August 10, 2017

Respectfully submitted

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3 /s/ William P. Nelson

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